

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION**

HENRY JAMES WIMBERLY, JR.,

Plaintiff,

v.

CARLTON POWERS, et. al.,

Defendants.

:
:
:
:
:
:
:
:
:
:
:
:

6:05-cv-41 (WLS)

ORDER

Before the Court is a Recommendation from United States Magistrate Judge G. Mallon Faircloth filed January 22, 2007, recommending that Defendant Richards' Motion for Summary Judgment (Doc. 86) be granted. (Doc. 104). Plaintiff filed a timely objection on February 5, 2007. (Doc. 107). Defendant Richards filed a timely response to Plaintiff's objection on March 6, 2007. (Doc. 114).

I. Report and Recommendation

It was noted that Plaintiff filed this lawsuit pursuant to 42 U.S.C. § 1983, alleging inadequate medical care and attention, as well as deliberate indifference, on the part of Defendant Richards, among others, after he was bitten by what he claims was a brown recluse spider. (Doc. 104). Relying upon Manders v. Lee, 338 F.3d 1304, 1304 (11th Cir. 2003), and its progeny, it was found that a deputy sheriff, when performing his official and authorized duties as an arm of the state, enjoys the same Eleventh Amendment immunity from Section 1983 claims as a sheriff when such claims are brought against the deputy in his official capacity. (Doc. 104). Citing Purcell v. Toombs County, 400 F.3d 1313, 1325 (11th Cir. 2005), for the holding that a Georgia sheriff "'functions as the arm of the State [and not the County] when promulgating policies and procedures governing conditions of confinement' at a county jail," it was found that "any claims against Defendant Richards in his official capacity as deputy sheriff must fail." *Id.* It is therefore recommended that Defendant Richards' Motion for Summary Judgment (Doc. 86) be granted.

In his objection, Plaintiff reasserts facts and arguments made in response to Defendants' Motion; the same which were adequately reviewed and addressed by the Magistrate Judge in his Recommendation. (Doc. 107; *see also* Docs. 90, 91). In his response to Plaintiff's objection, Defendant Richards submits that he agrees with the Recommendation. (Doc. 114). Upon review, the Court finds that Plaintiff's objections are without merit. Accordingly, said objections are **OVERRULED**.

Upon full review and consideration upon the record, the Court finds that said Recommendation (Doc. 104) should be, and hereby is, **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein, together with the findings made and conclusions reached herein. Accordingly, Defendant Richards' Motion for Summary Judgment (Doc. 86) is **GRANTED**.

SO ORDERED, this 21st day of March, 2007.

/s/W. Louis Sands
THE HONORABLE W. LOUIS SANDS,
UNITED STATES DISTRICT COURT